Empresas Inabon, Inc., Division of Ready Mix and Aggregates *and* Congreso de Uniones Industriales de Puerto Rico. Case 24–CA–7555

December 31, 1997

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on October 31, 1996, the General Counsel of the National Labor Relations Board issued a complaint on January 31, 1997, against Empresas Inabon, Inc., Division of Ready Mix and Aggregates, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although the Respondent filed an answer to the complaint, it withdrew that answer on October 29, 1997.

On November 28, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On December 4, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on October 29, 1997. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Puerto Rico corporation, with an office and place of business in Barrio Cotto Laurel, Ponce, Puerto Rico, has been engaged in the processing and sale of ready mix and aggregate products in Puerto Rico. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of $50,000 and purchased and received at its Cotto Laurel plant goods valued in excess of $50,000 directly from points outside Puerto Rico. Since about August 6, 1996, the Respondent has been a debtor-in-possession with full authority to continue its operations and to exercise all powers necessary to administer its business. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed by the employer at its Ready Mix plant in Barrio Cotto Laurel, Ponce, Puerto Rico, including truck drivers, mechanics, helpers, greasers and laborers; but excluding all office clerical employees, salesmen, dispatchers and supervisors as defined in the Act.

On October 22, 1993, in Case 24–CA–6336,[1] the Union was certified as the exclusive collective-bargaining representative of the unit by the Board, and, at all times since that date, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit. About June 6, 1996, the Union orally requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative. About the same date the Respondent withdrew recognition from the Union as the exclusive collective-bargaining representative of the unit and since that date has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain col-

[1] 309 NLRB 291.

lectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has withdrawn recognition from the Union and has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit, we shall order the Respondent do so on request.

ORDER

The National Labor Relations Board orders that the Respondent, Empresas Inabon, Inc., Division of Ready Mix and Aggregates, Barrio Cotto Laurel, Ponce, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from Congreso de Uniones Industriales de Puerto Rico or failing or refusing to recognize or bargain with the Union as the exclusive collective-bargaining representative of the following unit:

> All production and maintenance employees employed by the employer at its Ready Mix plant in Barrio Cotto Laurel, Ponce, Puerto Rico, including truck drivers, mechanics, helpers, greasers and laborers; but excluding all office clerical employees, salesmen, dispatchers and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Barrio Cotto Laurel, Ponce, Puerto Rico, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 6, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 1997

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from Congreso de Uniones Industriales de Puerto Rico or fail or refuse to recognize or bargain with it as the exclusive collective-bargaining representative of the following unit:

> All production and maintenance employees employed by us at our Ready Mix plant in Barrio Cotto Laurel, Ponce, Puerto Rico, including truck drivers, mechanics, helpers, greasers and laborers; but excluding all office clerical employees, salesmen, dispatchers and supervisors as defined in the Act.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

EMPRESAS INABON, INC., DIVISION OF READY MIX AND AGGREGATES